

REMARKS

Claims 26 through 44 were pending in the application. By this amendment, claim 26 has been amended to incorporate subject matter from several dependent claims, claims 32, 33, 39, and 41-44 have been amended to change dependency, and claims 31 and 36-38 have been cancelled. Accordingly, claims 26-30, 32-35, and 39-44 are now pending.

The following remarks are in response to the rejections of claims and other matters set forth in the Office Action.

I. Claims Rejected Under 35 U.S.C. § 112

The Examiner rejected claims 38-40 as failing to comply with the written description requirement. The Examiner stated that “the limitation of the flexible delivery catheter to buckle into transverse alignment with the tissue fold is not disclosed in the instant specification.”

In response, Applicants direct the attention of the Examiner to the descriptions provided at paragraphs 0082 through 0086, and to the illustrations provided in FIGS. 3A-E.

In particular, the following disclosure is provided in paragraph 0084:

Referring to FIG. 3D, additional proximal movement of actuator 17 causes flexible tubes 13 and 14 to buckle at bendable sections 25 and 26. Hinge assembly 20 transmits force applied to flexible tube 13 via control wire 19 and actuator 17 to the distal tip 24. Preferably, flexible tube 14 is configured so that distal tip 24 contacts, and is substantially perpendicular, to tissue fold F at contact point P2.

Applicants respectfully submit that at least the foregoing disclosure is sufficient to satisfy the written description requirement as to the limitations identified by the Examiner.

In addition, by this Amendment, Applicants have amended claim 26 to incorporate some, but not all, of the subject matter formerly contained in original claim 38. It is not clear from the rejection which portion of the content of claim 38 was found by the Examiner to lack support. In either case, Applicants believe that the recitation contained in amended claim 26 is fully supported by the foregoing (and other) portions of the specification.

Accordingly, Applicants request withdrawal of this objection.

II. Claim Rejected Under 35 U.S.C. § 102

The Examiner rejected claims 26-44 under 35 U.S.C. § 102(b) as being anticipated by USP 5,025,778 to Silverstein et al. Without acceding to any of the Examiner's stated grounds for rejecting the claims, Applicants respond as follows.

Claim 26 has been amended to recite an apparatus having, inter alia, an overtube, a first catheter, and

an anchor delivery system adapted to deliver an anchor assembly and secure a tissue fold, the anchor delivery system comprising a flexible delivery catheter having an internal lumen and being adapted for insertion into the hollow body organ, the flexible delivery catheter having a bending section adapted to transition from a first position in which the bending section is generally aligned with a longitudinal axis of a proximal portion of the flexible delivery catheter, to a second position in which the bending section is generally transverse to the longitudinal axis of the proximal portion of the flexible catheter.

The recitation of an anchor delivery system and portions of the above recitation were contained in claims 36 through 38, which were canceled by this Amendment. The Examiner relied upon the description of the apparatus illustrated in Figure 15 of the Silverstein patent to reject claims 36 through 38. The Silverstein patent, however, does not disclose, teach, or suggest an apparatus that includes a flexible delivery catheter "having an internal lumen" and that includes the "bending section" having the "first position" and the "second position" as recited. Instead, the Silverstein device includes a plurality of "fingers 106" that do not have an internal lumen, and a "device 148" that appears to be a needle extending through a tube, but the tube is not shown to have the recited "bending region." To the contrary, there is no description as to how the apparently rigid needle would be made to pass through any such bending region.

Accordingly, because the Silverstein patent does not disclose, teach, or suggest an apparatus that includes all of the limitations recited in claim 26, the claim is not anticipated. Applicant requests withdrawal of the rejection and allowance of the claim.

Claims 27-30, 32-35, and 39-44 each depend from claim 26, and should be allowed for the same reasons.

III. Claim Rejected For Double Patenting

The Examiner provisionally rejected claim 26 for double patenting. Applicants believe that the provisional rejection is rendered moot by the present amendment to claim 26. Accordingly, Applicants request withdrawal of the rejection.

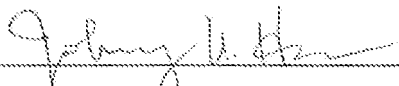
Amendment and/or cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented, but rather as an attempt to expedite allowance and issuance of the currently pending claims. No new matter has been added.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to **Deposit Account No. 50-3973** referencing Attorney Docket No. **USGINZ02513**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



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